BOOK REVIEWS

STORIA DEL DIRITTO ITALIANO. By Giuseppe Salvioli. Eighth edition. Turin: Unione Tipografico-Editrice Torinese. 1921. pp. xv, 851.

This new edition of a well-known work is much more than a new edition. It is a new book, recast and rewritten from end to end, and in its new form is indeed a model of what a history of a particular body of modern law should be. Paraphrasing the author's statement in the preface, his design is to keep always in touch with the social basis on which Italian law has been formed, with the atmosphere in which it exists and with Italian society in its economic, political, religious and moral life. Hence, he tells us, he has sought to write "the social, economic and juridical history of the Italian people, at least in its main lines, as an organic and indivisible whole." To write the history of law in this way, as both a part of jurisprudence and a part of sociology, one must be philosopher and economist and sociologist as well as historian and jurist. Professor Salvioli rises entirely to the high measure of the task which he set himself.

He does not tell the story of Italian law merely as the culmination of a long development of Roman law with some contaminations from Germanic law nor in terms of a gradually Romanized body of Germanic law by which Roman law was more and more absorbed and assimilated. Nor is his selection and interpretation of materials governed consciously or subconsciously by notions of a "juridical consciousness" or the "spirit of the people" or the "genius of the race" or by hard and fast laws of evolution. He is thoroughly aware of all that has been achieved in recent criticism of history-writing. Without falling into a mere chronological recital of detailed events and doctrinal phenomena as equally significant and equally insignificant, he avoids the "exaggerations of historicism." "Historical method in the moral sciences," he says, "is what the experimental method is in the biological sciences." Through it we may make jurisprudence an inductive science, founded upon generalizations of past experience. Hence one aim in the writing of legal history is to show the "bonds that unite the legal precepts of the past to those of today" and by investigating the origins, the development and the component elements of the legal precepts that have obtained among a people, and the forces that have modified them, to enable us to shape and apply legal materials intelligently and effectively in view of the social, economic, political and moral conditions of today. Legal history must hold a chief place in the prolegomena to all projects for improvement of the law; and the demand for improvement of law is always with us. The law of the day, formed historically with reference to demands of the past, always contains elements and precepts that are ill-adjusted to or even run counter to the social and moral requirements of the time. A merely analytical or rationalist critique of these will not suffice for purposes of law reform, as American experience with codes of civil procedure has illustrated abundantly. Nor will an idealistic historico-analytical critique avail. As a rule it does no more than intrench legal institutions and legal precepts by finding a historical idea behind them. The broader historical method that sees in legal institutions and rules and doctrines, not a simple picture of an evolution of pre-existing legal materials by the inherent force of something within them, but a complex picture of a diversified mass of historically given legal materials, "springing from the social soil," upon which jurists and lawmakers work partly with their inventive faculties but chiefly with methods of trial and error acquired by experience, so that legal precepts conform on the whole and in the end to "the economic structure of a people, its grade of civilization, its political organization and its moral and religious ideas" — this method gives a solid foundation for a science of law and an assured basis for doing things effectively in keeping the law abreast of the requirements of a continually changing social order.

Attention of the future historian of Anglo-American law may be directed particularly to the weight given to religious influence (*e. g.*, pp. 12, 631 ff.). Under the reign of rationalism and later under the reign of mechanical positivism it became fashionable to ignore this. The American legal historian who feels, as he must, Puritan ideas at work on every side in the shaping of American law as it stood in the nineteenth century, will do well to note how Italian law in its formative period responded in so many connections to the pressure of religious ideas. During the ascendency of the ethical idealistic interpretation of legal history the moral element was given prominence. But it was put in terms of a narrowly conceived idea of right so that the significance of religious and moral ideas of the time and place was not brought out. The historian of English equity also, when he treats of the doctrinal development of the subject, must reckon with the moral ideas of writers on theology, with the results worked out by casuists and probablists, and with the applications of religious ideas to practical morals, which were part of the atmosphere in which equity was long administered, if he is to understand equity doctrine aright. Here too he may get more than one hint from Professor Salvioli's story of the effect of these upon the development of the Italian law of obligations.

In the actual treatment of Italian legal history, Professor Salvioli has followed a systematic rather than a chronological method; he has not told the story century by century nor "period" by period, but has set off ideological types, as it were, and has not hesitated to tell of them as overlapping in point of time. Thus in Part I, treating of the sources, we have (1) the Germanic period (A. D. 568–1100), (2) the feudal period (888–1100), (3) the communal period (1100–1450), (4) the science of law, based on the Roman law of Justinian (1100 to the present) and (5) legislation (1400–1920). Then follows a history of public law (Part II) in which he takes up successively (1) the political ordering of Italy, under three heads, namely, the "Germanic intermezzo" between Roman administration and the rise of modern political ideas on Byzantine lines upon the basis of Justinian's texts, the Italian revival, and the rise and development of political theory, and (2) the social ordering of Italy, under four heads, namely, Germanic society, society in the feudal epoch, society in the communal epoch, and modern society. The discussion of the economic and class organization of society and its relation to legal institutions, under each of these heads, is most enlightening. Next comes a doctrinal and institutional history of private law (Part III) in which, however, the story is not told as one of the development of each doctrine or of each institution by force of an inherent faculty or as the unfolding of an inherent idea, nor, on the other hand, as a series of unique events unconnected with each other or with anything else. One is made to feel how thoroughly the doctrinal and institutional legal history of a people is but a part of its whole history, and how completely social and economic and political and legal history are but ways of looking at that history from particular standpoints and for particular purposes. Finally there is a history of penal law (Part IV) and of procedure (Part V). There is a full general bibliography (from which Holdsworth's History of English Law is missing) and rich special bibliographies on every point, which of themselves make the book exceptionally valuable for general purposes.

ROSCOE POUND.

THE LAW OF SALES. By John Barker Waite. Chicago: Callaghan & Co. 1921. pp. xii, 385.

Owing to its brevity Professor Waite's treatise on Sales will appeal primarily to the lay reader and to the law student, rather than to the trained